

# Kentucky Family Matters



News & Information About Kentucky's Family Court

Fall 2003

## In This Issue

Family Court  
Site Updates

KECC

House Bill 380

Guardian  
*ad Litem*  
Fees

Disability  
Benefits:  
Marital  
or  
Non-Marital?

Alternative  
Dispute  
Resolution

Families  
In  
Transition

Children's  
Art Contest

Q & A

Defining  
Unmarried  
Couple

Upcoming  
Events

## Guiding Our Work Guiding Our Work

**I**n this issue of Kentucky Family Matters, we share our continuing efforts to change the landscape of the court system to one that always places priority on the legal needs of children and families. You will find highlights of recent case law, news about valuable additions to the Administrative Office of the Courts, and updates on new and ongoing projects being carried out by the Department of Family Court.

Family Court now serves 42 counties in the Commonwealth, which is a little more than half of Kentucky's population. In addition to supporting the implementation of Family Court in several judicial circuits, the Department of Family Court has been working on the following initiatives:

- Researching the justice system's response to the increasing number of people who choose to represent themselves in court without an attorney and the challenges this presents.
- Working closely with the Information Systems Department to increase the value of the information on our Web page (soon we will have an entirely new look) at [www.kycourts.net](http://www.kycourts.net).
- Continuing in our efforts to increase the number and quality of court-connected divorce education programs.
- Improving the outreach and information provided to Kentucky's citizens about domestic and family law and legal procedures.

It has been a busy time since passage of the Family Court Constitutional Amendment in November 2002. We value your input in guiding our work and helping us remain focused on our goals. Let us know if you find this newsletter beneficial and feel free to suggest future features or articles. I welcome your feedback about what you find helpful.

*Carla Kreitman*  
*Manager, Department of Family Court*  
*Administrative Office of the Courts*

Kentucky Family Matters is a forum for the exchange of ideas and information relevant to Family Court. The viewpoints expressed in the articles submitted do not necessarily represent the viewpoint of the Administrative Office of the Courts. The Department of Family Court does not guarantee the accuracy of the information contained in submitted articles and is not responsible for any errors, omissions or results obtained from use of the information.

Department of Family Court • Administrative Office of the Courts • 100 Millcreek Park • Frankfort, Kentucky 40601  
800-928-2350 • [www.kycourts.net](http://www.kycourts.net)

# Family Court Site Updates

## Campbell County

By Cammi McGlone, Court Administrator

**Judge Michael (Mickey) Foellger** was appointed in December 2002 by Chief Justice Joseph Lambert as Family Court judge in the 17th Judicial Circuit which serves Campbell County. Judge Foellger served as a District judge in Campbell County for 12 years and was the chief regional



*Judge Michael Foellger poses with his wife and two children.*

district judge in Northern Kentucky. He has more than 20 years of experience in Juvenile Court, serving first as a guardian *ad litem* representing children and then as the chief juvenile prosecutor from 1985 to 1990 when he was an assistant commonwealth's attorney specializing in child abuse cases.

In 1992, he attended a program titled "Children in the Court" sponsored by the National Judicial College. In 1987, he helped

establish the community pediatric clinic as a member of the Campbell County Child Abuse Advisory Board. He was the president of the Northern Kentucky Bar Association in 1991 and was president of the District Judges Association of Kentucky in 2000. He received a bachelor's degree from Xavier University in 1969 and a juris doctorate from the University of Kentucky College of Law in 1972.

"I am most pleased with my new judicial position," said Judge Foellger. "I look forward to many rewarding years serving the families and children of our community and helping coordinate social services to assist them in their times of need."

**Cammi McGlone** is the court administrator. Cammi earned a bachelor of science degree in mental health/human services from Northern Kentucky University. She worked as a court designated worker for more than six years and as a victim's advocate in the Campbell County Attorney's Office for four years. She is married and has an 18-month-old daughter.

**Dave Mosmeier** is the case specialist. Dave graduated from the University of Kentucky with a bachelor's degree in 1973 and a master's degree in social work in 1975. He has worked as a mental health therapist in Western and Northern Kentucky. He has also worked for the Northern Kentucky Treatment Center, the Cabinet for Human Resources and the Boone County Fiscal Court as director of human services and administrator of Maplewood Children's Home. Dave retired in February 2003 and joined the Family Court staff in March 2003.

**Janice Gruner** is the judicial secretary. She is a 1996 graduate with an associate degree in paralegal studies. She was a paralegal/legal secretary for six years prior to joining Family Court. She is currently a student at Northern Kentucky University majoring in criminal justice. She is married and has two sons.

---

## Carter/Elliott/Morgan Counties

Rebecca Brown, Court Administrator

**Judge Kristi Hogg Gossett** was appointed in June 2002 by Gov. Patton as district judge, Division II for Carter, Elliott and Morgan counties. She became Family Court judge in January 2003. Judge Gossett graduated from Chase College of Law in 1994. She maintained a general practice in Olive Hill, Ky., from 1994 to 1999 and was employed with the legal department of Horizon Natural Resources, LLC in Ashland, Ky., from 1999 until her appointment.

Staff attorney **George M. Hogg** graduated from Morehead State University in 1970 and from the University of Louisville Law School in 1973. He maintained a general practice in Olive Hill, Ky., from 1973 to 1999. In addition to other responsibilities, George will be serving as a Family Court mediator.

Family court administrator **Rebecca F. Brown** is from Sandy Hook, Ky. She earned her bachelor's degree in sociology with a minor in public relations from Morehead State University in 2002. She joined the Family Court staff in January 2003.

**Rachel Howard**, a lifelong resident of Grayson, Ky., is the case specialist. She has 14 years of experience as a deputy court clerk for the Carter County Office of Circuit Court Clerk. Rachel joined the Family Court staff in January 2003 and recently completed mediation training.

**Sharon Sturgill** is the judicial secretary. She was employed for more than 20 years as an instructional assistant and speech therapist assistant with the Elliott County Board of Education. She has attended Ashland Community College and Morehead State University.



*Pictured, from left, are George Hogg, Rebecca Brown, Judge Kristi Hogg Gossett, Rachel Howard and Sharon Sturgill.*

---

## Harrison/ Nicholas/Pendleton/Robertson Counties

*Merrill Mitchell, Court Administrator*

**District Judge David Melcher** accepted the appointment to Family Court. Judge Melcher was elected as the 18th Judicial District Judge in November 1993. He graduated from the University of Dayton in 1968 and graduated from the University of Cincinnati College of Law in 1971. He is a recipient of the Constitutional Law Prize and served in the U.S. Army infantry.

**E. Merrill Mitchell (Mitch)** is the court administrator for Harrison, Pendleton, Nicholas and Robertson counties. He joined the Family Court staff in February 2003. A graduate of Kentucky Christian College, Mitch served in the U.S. Air Force from 1956 to 1962.

Before joining Family Court, law clerk **Barbara Paul** was in private practice. She graduated from Northern Kentucky University in 1983 and from Chase College of Law in 1990.

**James Webb** is the support worker. Jim graduated from Northern Kentucky University and received his master's degree in corrections from Xavier University. His career began in 1976 as a juvenile counselor and has continued as a program director for group homes and day treatment centers, social worker, court liaison worker, family services officer and community corrections coordinator for the Alternative Sentencing Program.

Last, but not least, we would like to welcome **Julie Major** who is the judicial secretary. Julie is a Harrison County native. She has a bachelor's degree in organizational management. She worked in the private sector for 17 years then made a career change to serve as a substitute teacher before joining Family Court.



*Family Court Judge  
David Melcher*

---

## Jefferson County

*Jim Birmingham, Court Administrator*

**Judge Stephen George** will begin a two-year term in January 2004 as the chief judge in Jefferson County. Judge George was born in 1952 in Lebanon, Ky. He received his bachelor's degree from the University of Louisville and his juris doctorate from the University of Louisville School of Law in 1976. He was in private practice from 1977 to 1983 with Eli George Law Office and 1983 to 2000 with George & George, concentrating in family law. He achieved a Martindale-Hubbell AV rating. He was appointed to Jefferson County District Court and assigned to Family Court in October 2000. He was unopposed in the November 2002 election.

Louisville native **Judge Kathleen Voor Montano** became the 10th judge assigned to Jefferson County Family Court in November 2002. In 1991, she began working for the Kentucky Court of Appeals and was appointed to the Jefferson District Court bench in 1998.

---

## McCracken County

*Nita Pursley, Court Administrator*

Who said the only thing that is constant is change? So true! In McCracken County we continue to adjust and improve. We have a new addition to our staff, Heather Roberts, who is our legal assistant. Without the blink of an eye, Heather has taken on many of the responsibilities that a law clerk or staff attorney has handled in the past. We couldn't be more pleased with her.

I would like to see a headline in the local news reading "**Truancy – a Thing of the Past.**" Now, that's not entirely true, but it is close. When we began Truancy Court in 1999, both the city and county elementary and middle schools needed the program and took advantage of it. This school year we have seen only one six-week Truancy Court session for one family in one of the city's elementary schools. It feels so nice to have something to brag about.



Judge Cynthia Sanderson and our support worker, Karen Nitschke, have worked very hard to establish a new program for out-of-control children and their families. The program is called *Parenting With Love and Limits*. The county fiscal court has made funds available through a Department for Juvenile Justice grant to train Karen and another instructor to facilitate the program for students referred by the middle schools to help prevent them from getting into the court system.

## *AOC's Department of Family Court*

# Personnel Changes

After 27 years with the Administrative Office of the Courts, Helen Morris, a valued member of the Department of Family Court, has announced her resignation. Helen's first job at the AOC was with Court Services.



*Helen Morris*

During her tenure, she worked in Research and Statistics and Accounting and Purchasing before coming to Family Court in 2001. We are sorry to see her leave, but are happy that she has the opportunity to enjoy life to the fullest outside of the workplace. Helen's husband, Don, is also retiring this fall and the two of them look forward to many days full of golf and grandchildren.

Kelly Pigman has accepted a position with the Department of Family Court. Kelly earned both her bachelor's degree in English and her juris doctor from the University of Kentucky. She served on the Kentucky Law Journal in 2001 and 2002. Kelly will bring strong legal skills, solid writing ability, comprehensive mediation skills and enthusiasm to Family Court. We look forward to welcoming her Oct. 1.

## *Kentucky Employees Charitable Campaign*

# The Power of One

The Kentucky Employees Charitable Campaign (KECC) was established in 1993 and is a unique opportunity for Kentucky state employees to donate to the charity of their choice through the convenience of payroll deduction. The KECC is endorsed by Gov. Paul Patton and is chaired this year by Revenue Cabinet Secretary Dana Mayton.

The six approved charitable organizations that benefit from the campaign are the Christian Appalachian Project, Community Health Charities, Easter Seals Kentucky, Prevent Child Abuse Kentucky, United Way of Kentucky and WHAS Crusade For Children. The approved charities undergo rigorous scrutiny by the Personnel Cabinet and must meet stringent guidelines for accountability. More than 1,000 charitable programs, covering almost every aspect of health and human services, are represented by the approved charities.

The Family Court and Alternative Dispute Resolution departments are working together to coordinate the AOC's campaign this year. We are delighted to report that the Judicial Branch has already met 21 percent of our goal for the 2003 campaign. This is a terrific start. Congratulations, everyone, and thank you!

To learn more about the Kentucky Employees Charitable Campaign, contact 502-589-2296 or [kecc@uwky.org](mailto:kecc@uwky.org).



*Carol Paisley, ADR Department, left, Kim Leingang, KHEAA. Carol and Kim enjoying themselves at the 2003 KECC Carnival Kickoff.*



## Setting the Jurisdiction of Family Court

**The 2003 Kentucky General Assembly passed House Bill 380 in regular session. HB 380 relates to Family Court and became effective June 24, 2003. The bill repealed, re-enacted and amended KRS 23A.100, which sets forth the jurisdiction of the Family Court division of Circuit Court. The text of HB 380 is as follows:**

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. KRS 23A.100 IS REPEALED, REENACTED, AND AMENDED TO READ AS FOLLOWS:

- (1) As a division of Circuit Court with general jurisdiction pursuant to Section 112(6) of the Constitution of Kentucky, a Family Court division of Circuit Court shall retain jurisdiction in the following cases:
  - (a) Dissolution of marriage;
  - (b) Child custody;
  - (c) Visitation;
  - (d) Maintenance and support;
  - (e) Equitable distribution of property in dissolution cases;
  - (f) Adoption; and
  - (g) Termination of parental rights.
- (2) In addition to general jurisdiction of Circuit Court, a Family Court division of Circuit Court shall have the following additional jurisdiction:
  - (a) Domestic violence and abuse proceedings under KRS Chapter 403 subsequent to the issuance of an emergency protective order in accord with local protocols under KRS 403.735;
  - (b) Proceedings under the Uniform Act on Paternity, KRS Chapter 406, and the Uniform Interstate Family Support Act, KRS 407.5101 to 407.5902;
  - (c) Dependency, neglect, and abuse proceedings under KRS Chapter 620; and
  - (d) Juvenile status offenses under KRS Chapter 630, except where proceedings under KRS Chapter 635 or 640 are pending.
- (3) Family Court division of Circuit Court shall be the primary forum for cases in this section, except, that nothing in this section shall be construed to limit the concurrent jurisdiction of District Court.

SECTION 2. KRS 23A.110 REPEALED, RE-ENACTED AND AMENDED TO READ AS FOLLOWS:

The additional jurisdiction of a Family Court division of Circuit Court shall be liberally construed and applied to promote its underlying purposes, which are as follows:

- (1) To strengthen and preserve the integrity of the family and safeguard marital and familial relationships;
- (2) To protect children and adult family members from domestic violence and abuse;
- (3) To promote the amicable settlement of disputes that have arisen between family members;
- (4) To assure an adequate remedy for children adjudged to be dependent, abused, or neglected, and for those children adjudicated as status offenders;
- (5) To mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage;
- (6) To make adequate provision for the care, custody, and support of minor children of divorce and for those children who have been born out of wedlock; and
- (7) To provide a level of proceedings, when necessary, that is more appropriate to a Family Court division of Circuit Court.

## Kentucky Family Court Sites



## Guardian *ad Litem* Fees in Dependency, Neglect and Abuse Cases

By Lyn Lee Guarnieri, Guardian *ad Litem* Education Specialist  
Department for Dependent Children's Services. AOC

If a court determines, as a result of a temporary removal hearing, that further proceedings are required, the court shall appoint a guardian *ad litem* counsel for the child and separate counsel for the parent who exercises custodial control or supervision. A court may also appoint counsel for a non-parent who exercises custodial control or supervision. **KRS 620.100.**

**KRS 620.100** limits the fee for payment to counsel for child and/or parent in a dependency, neglect and abuse case to \$250 if the case has final disposition in the District Court and \$500 if the case has final disposition in the Circuit Court. KRS 625 addresses fee payments for GALs and parents' attorneys in voluntary and involuntary termination of parental rights (TPR) cases.

In both types of cases, the fee awarded to an attorney shall not exceed \$500. See KRS 625.0405, 625.041 and KRS 625.082.

If the child is in custody of the Cabinet for Families and Children, the counsel fee for the GAL and the fee for a parent or person exercising custodial control is to be paid by the Finance and Administration Cabinet. The Finance and Administration Cabinet is currently developing a new system for the submission of requests for payment for these fees. When all standards and procedures are in place, all persons who have represented either a child or a parent will be notified of the new policies and procedures.

For questions regarding guardian *ad litem* practice, contact Lyn Lee Guarnieri at 502-573-2350 or lynlee@mail.aoc.state.ky.us

## Family Court launches a Safe Place in Franklin County

Franklin County Family Court recently joined the ranks of more than 11,500 sites in 42 states that offer Safe Places. The Safe Place program was first launched in Louisville in 1983 through the YMCA of Greater Louisville. Safe Place is where children can turn in times of crisis. Businesses, community buildings and buses are designated as Safe Place sites and prominently display a distinctive yellow and black Safe Place logo. Any youth can walk into a Safe Place and let an employee know that they need help. They are quickly connected with a youth serving agency that can provide the help they need.

Debbie DeMers is the Safe Place coordinator for Franklin County. Until now, Project Safe Place has been available only in cities with emergency youth shelters in place. Franklin County Family Court staff Nancy Hulett, Jennifer Miklavcic, Kelly Pigman and Ann Lewis have completed the training and believe that Safe Place is a natural fit with Family Court. For information about becoming a volunteer or serving as a Safe Place site in Franklin County, call Debbie at 502-875-3495.



Family Court Judge Reed Rhorer and Tonya Hartley, Safe Place Advisory Committee Chairperson, assist Chris Perkins, Court Building Maintenance, in securing the SafePlace sign on the Franklin County Court house building. Project Safe Place officially started in June in Franklin County. The program gives children a place to go if they feel in danger. Photo courtesy of Amy Wallot, staff photographer for The State Journal, Frankfort.

# Disability Benefits: Marital or Non-Marital?

By Laura Jones  
Staff Attorney, Clark/Madison Family Court

In many divorce proceedings, the judge is required to examine assets of the parties and determine an equitable division. Before this division can take place, each asset must be determined to be either marital or non-marital. This decision may be simple or it may be quite difficult, depending on the type of asset involved. Recently, the Kentucky Supreme Court provided a clear standard for the determination of whether disability proceeds, which will be received after the divorce, are to be considered as a marital or non-marital asset.

Disability proceeds may be similar to retirement benefits offered by an employer or an employee may purchase a private disability insurance policy. Regardless of the manner attained, the benefit is received in the event an employee is injured or disabled and unable to complete his or her job functions. In previous divorce proceedings, the classification of this benefit has proved controversial. Though the funds used to purchase the benefit may be marital, the benefit itself is often of a nature so as to continue long after the marriage has been dissolved. Does each spouse have an entitlement to a portion of the benefit as is the case involving a retirement benefit, or is the benefit personal in nature, not subject to division after the date of dissolution?

The trouble with such an asset is that until very recently there was no clear-cut standard or statute addressing the issue. Under KRS 403.190 (2), “marital property” is defined as all property acquired by the parties after the date of their marriage. There are five exceptions to this definition; however, none of these deal with disability proceeds.

Other state courts have examined this issue and two popular analyses have been used. The Supreme Court of Tennessee in Gragg v. Gragg, 12 S.W. 3d 412 (Tenn. 2000), clearly states both of these approaches and names them the 1) analytic approach and 2) mechanistic approach. According to the analytic approach, the court must consider the type of income the benefit is intended to replace. In some cases, the benefit may actually be a retirement benefit, while other disability proceeds replace lost income to a spouse who is no longer able to perform his job duties. This court reasoned that a retirement benefit would be divided the same as any other retirement benefit but that a benefit replacing lost income would be a personal benefit. Therefore, the future payments would be non-marital. In any case, any proceeds received during the marriage would be considered marital as would any income received during the marriage. The court went on to say that the benefit could be considered in awarding maintenance to a spouse following the divorce. In Gragg, the mechanistic approach, which requires a court to merely read the language of the statute and make a decision based on that specific language, is rejected.

In June 2002, the Kentucky Supreme Court addressed this hot topic in Holman v. Holman, Ky., 84 S.W.3d 903 (2002). In Holman, the court is asked to determine the proper division of disability proceeds received by a spouse due to his complete disability and his inability to work as a firefighter. The court discusses both approaches outlined in Gragg (*Id.* at 906) and then chooses the analytic approach, classifying disability benefits based on the “character of property they replace”. (*Id.*) The Kentucky Supreme Court distinguishes retirement benefits (marital property) from disability benefits (non-marital property) saying that retirement benefits are “a form of deferred compensation or savings earned during the marriage similar to income earned or savings accumulated during the marriage”. In contrast, disability benefits are not a form of deferred compensation or savings. Post-dissolution disability benefits replace wages or income loss after the marriage, and accordingly, disability benefits should be



treated differently from retirement benefits.” *Id.* at 907 The court goes on to say that disability benefits are “classified according to the nature of the wages they replace rather than the source of funds used to acquire his disability coverage. *Id.* at 908

In Holman, the Kentucky Supreme Court has given a definitive answer to the debate over the classification of disability proceeds owing to a spouse post-dissolution. A trial court faced with such an asset must examine the underlying nature of the benefit in order to understand how the asset should be treated in a divorce situation. While a spouse may be entitled to retirement type benefits, disability proceeds intended to compensate a disabled spouse for lost income is not a marital asset past the date of dissolution. The court may, however, consider the benefit in awarding maintenance.

# Alternative Dispute Resolution

*By Carol Paisley  
Manager, Department of ADR Services*

## Courts use mediation to settle disputes, reduce caseloads

By now most of you are aware that Chief Justice Joseph Lambert seized an opportunity to provide wider and more efficient access to justice in Kentucky and established the Department of Alternative Dispute Resolution (ADR) Services within the Administrative Office of the Courts. The creation of this department in 2002 was a logical step after the Kentucky Supreme Court adopted the Model Mediation Rules in 2000 and fostered the growth of the Family Court system with its reliance on mediation as an effective alternative for handling tough family issues.

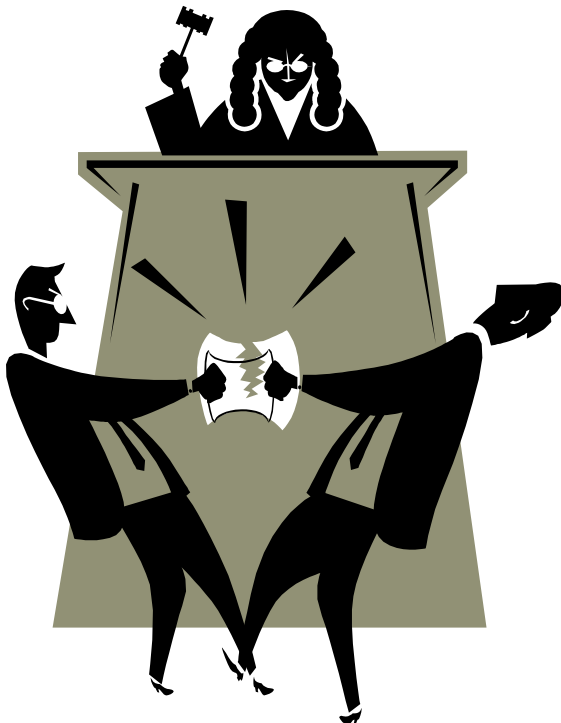
ADR Services embraces several objectives in its efforts to better serve the citizens of the Commonwealth. One is to ensure enough qualified mediators throughout the state. To that end, the department has sponsored training sessions in Lexington, Ashland, Frankfort, Somerset and Owensboro.

The next training program is scheduled for Nov. 17-21, 2003, at the Fayette County Circuit Courthouse in Lexington. Others in the planning stages will take place in Covington, Paducah and Prestonsburg. As details become available, they will be added to the Kentucky Court of Justice Web site at [www.kycourts.net](http://www.kycourts.net). Click on the Administrative Office of the Courts menu and select Alternative Dispute Resolution.

Another way ADR Services strives to provide better services is the adoption of AOC guidelines for individuals who mediate cases for Kentucky's courts. The Guidelines Committee, consisting of lawyers, mediators, judges and AOC staff, has met several times to define these guidelines and anticipates a final product in the next few months. These too will be added to the Court of Justice web site.

Finally, ADR Services has conducted personal interviews and written surveys which have revealed the need for small claims and Family Court mediation programs. Fortunately, Fayette County has had the benefit of these programs for several years and provides a valuable training ground and source of information to others. Small claims programs have been implemented in Boone, Bourbon, Clark, Gallatin, Madison, Scott, and Woodford counties. Record numbers of Family Court support workers, case specialists and private mediators are taking family mediation training. Family Court is incorporating motion hour mediation and referring more cases to private mediators. Jefferson and Fayette counties already have motion hour mediation programs. Carter, Elliott, Morgan and McCracken counties are developing theirs.

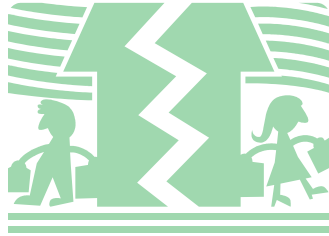
The Department of ADR Services is dynamic and fluid as it strives to meet the needs and demands of Kentucky's court system. Your comments and suggestions are important as we promote ADR and the value of mediation. By working together, Kentucky can become a national leader in this field. We hope to hear from you at [ADR@mail.aoc.state.ky.us](mailto:ADR@mail.aoc.state.ky.us).





## Families In Transition provides skills for coping with divorce

Families in Transition (FIT) is a program designed for parents and children (ages 8-16) to help them cope more effectively with problems that result from divorce. The program was established to provide divorcing parents with the tools and skills to communicate effectively so that parental conflicts can be resolved with the best interest of the children in mind. The major goals of the program are to:



- Prevent or reduce children's anxiety, aggression, depression and behavioral problems.
- Increase social competencies critical to children's post-divorce adjustment.

The program's underlying premise is that when both parents are able to work cooperatively to meet the needs of their children, the family is more unlikely to return to court to resolve their differences. For this reason, an educational program to support the parents and children was established.

A torn jacket is soon mended,  
but hard words bruise the  
heart of a child.

– Henry Wadsworth Longfellow



### Jefferson County Family Drug Court receives grant

Jefferson Family Drug Court has received a \$1.2 million grant for three years from the U.S. Department of Health and Human Services. The grant will allow the project to expand services. The target population for participation in the program are substance-abusing women who have had their children placed out of their homes. The vision of the court is to facilitate the recovery and development of a safe, healthy, permanent family for every child in a timely and therapeutic manner.

## Children's Art Contest accepting entries

The Department of Family Court and the Families In Transition (FIT) Divorce Education Program are sponsoring an art contest for children ages 8-16. The FIT Program is currently updating and redesigning its workbooks for children, adolescents and adults, and are in need of new illustrations. Winners will have their art work featured on the cover as well as in the workbooks. The theme of the contest is "



Something I Think Kids Should Know About Divorce." Art work needs to be 8 1/2" x 11" in size. Selected entries will be displayed at the Administrative Office of the Courts in the Department of Family Court. The contest deadline is **November 30, 2003.**

To enter, write the artist's name, age, address and phone number on back of the art work and mail to: Department of Family Court, 100 Millcreek Park, Building 11, Frankfort, KY 40601.

# Q & A

**May a director of pupil personnel (DPP) sign a petition for dependency, neglect and abuse (DNA)? How is the determination made whether to proceed as an educational neglect petition or a truancy action? I thought only the Cabinet for Families and Children could file a dependency petition?**

A director of pupil personnel may sign a dependency, neglect and abuse petition based on educational neglect or truancy. Whether to proceed on grounds of educational neglect or truancy will be determined by the person filing the petition, such as the county attorney, private citizen, peace officer or DPP. While a DNA petition will generally be brought by the Cabinet for Families and Children, there is no restriction on who may file such an action. The Office of Circuit Court Clerk accepts all petitions. If the judge decides the petitioner has chosen an inappropriate course, he or she will rule accordingly. The relevant statutes supporting this response are as follows:

**KRS 159.130** specifies the *powers* of a DPP. While the DPP and his/her assistants are vested with peace officer powers, they are not authorized to serve warrants. They may, however, "investigate in their district any case of nonattendance at school of any child of compulsory school age or suspected of being of that age. They may take such action in accordance with law as the superintendent directs. They may under the direction of the superintendent of schools and the board of education or the Kentucky Board of Education, institute proceedings against any person violating any provisions of the laws relating to compulsory attendance and the employment of children. They may enter all places where children are employed and do whatever is necessary to enforce the laws relating to compulsory attendance and employment of children of compulsory school age. No person shall refuse to permit or in any way interfere with the entrance therein of a director of pupil personnel or in any way interfere with any investigation therein."

**KRS 159.140** specifies *DPP duties*. The DPP shall:

- (1) Devote his entire time to the duties of his office;
- (2) Enforce the compulsory attendance and census laws in the attendance district he serves;
- (3) Acquaint the school with the home conditions of the student, and the home with the work and advantages of the school;
- (4) Ascertain the causes of irregular attendance and truancy, and seek the elimination of these causes;
- (5) Secure the enrollment in school of all students who should be enrolled and keep all enrolled students in reasonably regular attendance;
- (6) Visit the homes of students who are absent from school or who are reported to be in need of books, clothing or parental care;
- (7) Provide for the interviewing of students and the parents of those students who quit school to determine the reasons for the decision. The interviews shall be conducted in a location that is non-threatening for the students and parents and according to procedures and interview questions established by an administrative regulation promulgated by the Kentucky Board of Education. The questions shall be designed to provide data that can be used for local district and statewide research and decision-making. Data shall be reported annually to the local board of education and the Department of Education;
- (8) Report to the superintendent of schools in the district in which the student resides the number and cost of books and school supplies needed by any student whose parent, guardian or custodian does not have sufficient income to furnish the child with the necessary books and school supplies;
- (9) Keep the records and make the reports that are required by law, by regulation of the Kentucky Board of

Education and by the superintendent and board of education.

**KRS 600.020(1)(h)** describes the concept of "educational neglect." It provides in relevant part that in KRS Chapters 600 to 645:

- (1) "Abused or neglected child" means a child whose health or welfare is harmed or threatened with harm when his parent, guardian or other person exercising custodial control or supervision of the child ...
- (h) Does not provide the child with adequate care, supervision, food, clothing, shelter and education or medical care necessary for the child's well-being. A parent or other person exercising custodial control or supervision of the child legitimately practicing the person's religious beliefs shall not be considered a negligent parent solely because of failure to provide specified medical treatment for a child for that reason alone. This



exception shall not preclude a court from ordering necessary medical services for a child ...

In addition, every parent, guardian or custodian of a child in any Kentucky school district is legally responsible for sending the child to school.

**KRS 159.010 to 159.170.** Finally, dependency, neglect and abuse issues are generally governed by **KRS Chapter 620.**

## Defining Unmarried Couple

The Supreme Court of Kentucky rendered an opinion in April 2003, in the case of Barnett v. Wiley, 103 S. W.3d17 (Ky. 2003).

The sole issue raised in this appeal is whether the appellant and the appellee were an “unmarried couple” within the meaning of KRS 403.720, so that the appellee could obtain a Domestic Violence Order (DVO) against the appellant. The Court held that the couple were not an “unmarried couple,” as defined in KRS 403.720(3).

On February 21, 2000, the appellee petitioned the circuit appellant. In the petition, she alleged the appellant approached her car, banged on the window, threatened to kill her, and followed her in his vehicle in a reckless manner after she drove away. At the hearing on the DVO motion, the appellee testified that she was not related to the appellant, had no children in common with him, and had never lived with him. Nonetheless, the trial court granted her petition for a protective order.

The appellant moved to have the petition dismissed on grounds that the appellee did not have standing to seek a DVO against him, because they were not an “unmarried

couple” as the term is defined by KRS 403.720(3). The trial court summarily denied the motion. The appellant then filed a motion to reconsider.



The trial court again denied the motion, but this time included conclusions of law. In the order the trial court reasoned that its expansive definition of an “unmarried couple” was consistent with the assuredly vital public policy of protecting and preventing domestic violence. In a two-to-one decision, the Court of Appeals agreed with the trial court’s reasoning and affirmed. In his dissent, the judge concluded that the plain language of the statute could not be stretched to construe a dating relationship as falling within the definition of an

“unmarried couple.” We agree with the judge and, therefore, reverse the Court of Appeals’ decision.

KRS 403.725 states that “any family member or member of an unmarried couple” may file a petition for a protective order under the domestic violence statutes. Member of an unmarried couple” is defined as including “each member of an unmarried couple which allegedly has a child in common, any children of that couple, or a member of an unmarried couple who are living together or have formerly lived together. KRS 403.720(3). There are no Kentucky cases that address the issue of what the term “living together” means in the context of domestic violence statutes.

But under the plain language of the statute, there must be, at a minimum, proof that the petitioner seeking a DVO shares or has shared living quarters with the respondent before a finding can be made that the two are an “unmarried couple” under KRS 403.725. Because there is no proof in the record that the appellant and the appellee ever shared living quarters, either permanently or on a part-time or temporary basis, we hold that the trial court erred in issuing a DVO against the appellant.

### UPCOMING EVENTS

Fayette Family Court Adoption Day, Lexington  
KECC Talent Contest, AOC  
Divorce Education Roundtable, Natural Bridge State Park  
Family Court Administrator Training, AOC  
ADR/General Civil Mediation, Fayette County Circuit Courthouse

September 22, 2003  
October 24, 2003  
October 23, 2003  
October 27-28, 2003  
November 17-21, 2003

For more information, contact The Department of Family Court at 800-928-2350.

Department of Family Court  
Administrative Office of the Courts  
100 Millcreek Park  
Frankfort, Kentucky 40601-9230  
[www.kycourts.net](http://www.kycourts.net)